

EX PARTE OR LATE FILED

NATIONAL PCS CONSORTIUM, INC.

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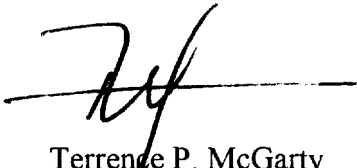
April 19, 1994

William Caton
Secretary, Acting
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

Enclosed are the Original and four (4) copies of our Ex Parte Filing regarding 90-314 comments on the Open Public Hearing, due on or before April 22, 1994.

Very truly yours,



Terrence P. McGarty
President

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EX PARTE OR LATE FILED

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Comments on)
Hearings Held by the Commission) April 19, 1994
Regarding PCS, and)
Docket 90-314)

Comments From)
National PCS Consortium, Inc.)

EX PARTE

FILING OF COMMENTS REGARDING PCS ISSUES

The National PCS Consortium, Inc., the "Commentor", represents itself and PCS experimental operator, Telmarc Telecommunications, Telmarc Group, and Telmarc Mountaineer Telecommunications. The Commentor has itself or through one of its affiliates filed comments directly on these issues or others over the period of this docket. The comments contained in the Ex Parte filing, as suggested by the Commission, relate to the following issues, raised by and discussed by the Commission in the Panel Discussions of April 11-12, 1994.¹ Specifically:

- ***PCS Definition: The Commentor has consistently defined PCS as the wireless provision of toll grade voice and data services in a seamless interoperable national network.***²

The development of PCS is a direct competitive entry into the Local Exchange Carrier, LEC, market. As such, the Commentor has indicated previously, that PCS is directly

¹ See FCC New Release date April 4, 1994 announcing the Panel Meeting and soliciting comments on or before April 22, 1994.

² See Telmarc NPRM Comments, November 22, 1992. In these comments the Commentor defined PCS as in this section. In fact, the Commentor recommended auctions, three bands, going ultimately to five, with two at a higher frequency, a minimum of 20 MHz, restrictions on RBOCs and a Small Business Preference. In Telmarc, NPRM Reply Comments, December 12, 1992.

competitive with the current Bell Operating Company, BOC, markets.³ As a competitive service, it raises the key policy issue of whether the FCC desires competition in the local markets. If it does, then the existing RBOCs already have the wire based business, all of the B Side cellular business, almost 50% of the A Side business, and the Commission proposes that they be allowed to have, at a large enough price, potential all of the PCS business. The Commentor suggest that if this is to be a competitor to the LECs then the competition should be allowed a fair and equitable opportunity. All of this goes to the heart of the question of what is PCS. The Commentor has found agreement with the above definition in a broad cross section of other Commentor and filers with the Commission.

- ***Competition will exist if and only if there is a means to allow non-RBOC entities to compete for spectrum in an auction process.***

This implies that RBOCs are players in PCS, by the very definition that PCS is a local exchange service. The Commentor recognizes that the Commission has a responsibility under the Budget Reconciliation Act of 1993 to raise treasury funds from an auction, and that such a process is only accomplished if there are bidders who have the resources. To accomplish this one must create scarcity. Thus the Commentor suggests that a balance between competition and funds raising is the creation of three bands of spectrum, allocated as follows:

- ***Band 1: RBOC and Dominant IEC Only: This is a band that includes all RBOCs, GTE, and AT&T, MCI, and Sprint, and any derivative companies created prior to the date of the filing of Comments on the NPRM on 90-314, specifically November 22, 1992.***
- ***Band 2: A "set aside" band for Small Business, including Rural Telcos, wherein minorities would receive "tax certificates", as has been done elsewhere.***
- ***Band 3: All other bidders, thus allowing Cable Television companies, and others a fair and equitable opportunity to bid.***

³ See the papers by McGarty discussing this fundamental change in telecommunications. Specifically: (i) Alternative Networking Architectures; Pricing, Policy, and Competition, Information Infrastructures for the 1990s, John F. Kennedy School of Government, Harvard University, November, 1990. (ii) Information Architectures and Infrastructures; Value Creation and Transfer, Nineteenth Annual Telecommunications Research Conference, Plenary Address and Paper, Solomon's Island, September, 1991. (iii) Communications Networks; A Morphological and Taxonomical Approach, Private Networks and Public Policy Conference, Columbia University, New York, October, 1991. (iv) Alternative Networking Architectures, B. Kahin Editor, McGraw-Hill (New York), October, 1991. (v) Wireless Communications Economics, Advanced Telecommunications Institute Policy Paper, Carnegie Mellon University, February, 1992. (vi) Communications Network Morphological and Taxonomical Policy Implications, Telecommunications Policy Research Conference, Solomon's Island, MD, September, 1992. (vii) Architectures et Structures de L'Information, Reseaux, No 56, pp. 119-156, December, 1992, Paris.

All Bands would be a minimum of 25 MHz, and all would be MTAs. Thus there would be 153 auction properties.

- ***“Small Businesses” must meet a suitable Standard of Non-Fronting.***

The goal of enabling competition in the local exchange market can only be achieved by entities whose allegiance are not owed to the existing monopolist.⁴ Thus the issue of “Fronting” is a key issue in PCS. Thus it is imperative that no “Small Business” have, directly, or otherwise, any financial interest from an RBOC, GTE, dominant Inter Exchange Carrier, of dominant cellular carrier, such as McCaw, Vanguard, or others. The Commentor recognizes the need for small business to raise capital, and the Commentor recognizes the need for the Government to raise tax revenue. The Commentor also recognizes the natural economic law of scarcity, namely that the price a bidder is willing to pay is proportional to its scarcity. In this case by ensuring non beneficial “Fronting” the Commission will naturally raise the value of the spectrum. The ability of a Small Business to raise capital will not be reduced by implementation of such a rule, to the contrary, it will be significantly increased.

- ***The Critical Success criteria for Success in PCS are simply:***

- ***Elimination of Access Fees***
- ***Low Capital Per Subscriber***
- ***Low Per Customer Operating Costs***
- ***Low Cost per Portable***
- ***Low Sales Cost per New Customer***

⁴ The National PCS Consortium, G.P., filed the following excerpt in July 29, 1993. “National PCS Consortium, G.P. (NPC), the first such PCS partnership of small and large companies, was formed in June 1992 to develop and operate Personal Communications Services (PCS). NPC believes PCS potentially offers the broadest base of American consumers quality wireless telephone service at costs competitive to existing residential service and 30 to 50 percent below existing wireless service. To achieve maximum consumer benefit, PCS must be capable of transmitting voice and data at a quality level comparable to existing services over a locally operated system connected to a seamless interoperable national network.

Since PCS as a technology or a business does not yet exist, innovators must be encouraged to pursue and continue their investment of creative and capital resources in this field. The innovative and competitive environment that brought long distance rates down by more than 50 percent will result in the same benefits to PCS consumers in local rate savings, if PCS is allowed to be a competitive service. Only through competition in local markets will a national network, offering a truly new service, be developed in a timely and efficient manner.

To this end, NPC believes a low cost service will reach the largest number of people, in the most markets, in the shortest time, if independent local service providers are licensed, and agree to operate as part of a national network. In the NPC, the national network will be managed by an operating entity ...this national entity will provide, on behalf of the local providers, access to technologies and all common network services. The consolidation of resources in a single national entity is a key element in establishing NPC's offering as a less expensive and better quality service.”

To achieve these critical success criteria, the Commission must play a supportive role, however, it must be the responsibility of each of the entrants to be able to achieve each of these. It has been argued by the Commission Staff, that there are scale economies in certain areas of the success factor. As has been previously shown by the Commentor, de minimis scale exists in the local plant capital if technology such as Qualcomm's CDMA is deployed.⁵ Scale does exist in the back office operations, including the elements of billing, customer service, directory assistance, network management, and other elements. The Commentor has previously indicated that for the Small Business play, the establishment of "Back Office" support consortia, such as proposed and developed by the Commentor allows all "Small Business" players the same or possibly improved scale as compared to larger players. Specifically, the Commentor has indicated that there is the ability to deliver the services at a fixed price per customer per month.

The Commentor has indicated that capital costs, terminal costs, and even sales costs are under the control of any efficient operator and may be comparable. Back Office costs may be pooled. The last success factor is access fees. The Commentor has argued elsewhere that any access fee establishes a discriminatory price advantage to the entrenched monopolist, and is therefore a de facto barrier to entry to any new entrant.⁶ The potential for the establishment and institutionalization of predatory pricing mechanism is very strong. The Commission must clearly establish a set of guidelines, not just to "balance" access fees, but to eliminate them between competing local exchange carriers.

- ***The Expeditious Implementation of PCS Auctions goes to the heart of the success of PCS. The Commentor strongly recommends that the Commission conclude all auctions by no later than January 15, 1995.***

Failure to do so will result in loss of interest by the capital markets. Clearly any delay plays into the hands of the monopolists, namely the RBOCs, and also plays to the existing cellular carriers. Competition is only effective if it is timely and hopefully contemporaneously.

⁵ See Telmarc's Quarterly Reports, First Report, January 1, 1993, Second Report, April, 1, 1993, Third Report, July 1, 1993, Fourth Report, October 1, 1993, Fifth Report, January 1, 1994, and Sixth Report, April 1, 1994. These Reports details the experimental efforts that demonstrate the capital structure that has evolved, the operating cost structure and the issues of access fees.

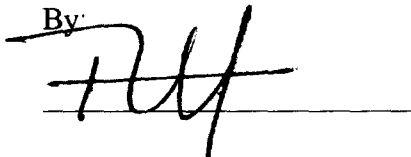
⁶ See the papers by McGarty, specifically; (i) Wireless Access to the Local Loop, MIT Universal Personal Communications Symposium, March, 1993. (ii) Spectrum Allocation Alternatives; Industrial; Policy versus Fiscal Policy, MIT Universal Personal Communications Symposium, March, 1993. (iii) Access Policy and the Changing Telecommunications Infrastructures, Telecommunications Policy Research Conference, Solomon's Island, MD, September, 1993. (iv) Economic Structural Analysis of Wireless Communications Systems, Advanced Telecommunications Institute Policy Paper, Carnegie Mellon University, February, 1993. (v) Access to the Local Loop; Options, Evolution and Policy Implications, Kennedy School of Government, Harvard University, Infrastructures in Massachusetts, March, 1993.

Respectfully submitted,

National PCS Consortium, Inc.

APRIL 19, 1994

By:

A handwritten signature in black ink, appearing to be 'T. McGarty', written over a horizontal line.

Terrence P. McGarty

President

National PCS Consortium, Inc.

24 Woodbine Rd

Florham Park, NJ 07932

201-377-6269

Dated: April 19, 1994

CERTIFICATE OF SERVICE

I, Terrence P. McGarty, hereby certify that a copy of the foregoing has been sent by hand delivery (*) or by United States mail, first class and postage prepaid, to the following on this Nineteenth day of April, 1994:

The Honorable Reed E. Hundt
Chairman, Federal Communications
Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Dr. Thomas P. Stanley, Chief
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, Room 7002
Washington, D.C., 20554

The Honorable James H. Quello
Commissioner, Federal Communications
Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

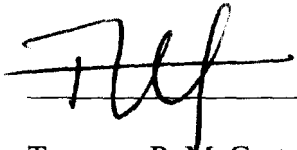
Gail Brown
Private Radio Bureau, Room 5002
Federal Communications Commission
2025 M Street, Room 7002
Washington, D.C., 20554

The Honorable Andrew C. Barrett
Commissioner, Federal Communications
Commission
1919 M Street, N.W., Room 844
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Donald Gips, Deputy Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, Room 822
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Dr. Robert M. Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, Room 822
Washington, D.C. 20554

Attested to this day, April 19, 1994,

A handwritten signature in black ink, appearing to be 'T. McGarty', written over a horizontal line.

Terrence P. McGarty
President,
National PCS Consortium, Inc.